

IN THE JUSTICE OF THE PEACE COURT NO. 16
OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

DELAWARE STATE HOUSING
AUTHORITY/CLARKS CORNER,

Plaintiff,

v.

STEPHANIE MORRIS,

Defendant.

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C.A. No. JP16-10-002675

Before **HUTCHISON, MURRAY** and **WALL**, Magistrates.

ORDER

This is an action for summary possession based on drug-related activity in a landlord/tenant case, which was appealed by plaintiff-below to a three Justice of the Peace Panel from an order dated July 14, 2010.

Trial *de novo* before a Special Court comprised of a Three Judge Panel, as provided by 25 *Del. C.* § 5717(a) convened August 5, 2010 before Judges Hutchison, Murray and Wall. Delaware State Housing Authority/Clarks Corner ("Plaintiff") was represented by Jeffrey J. Clark, Esquire. Stephanie Morris ("Defendant") appeared *pro se*.

After hearing testimony and reviewing the evidence, the panel finds for plaintiff.

PRE-TRIAL MOTION

On August 3, 2010, Officer Jessica Jacobs filed a motion to quash her subpoena. Thereafter, the Court scheduled said motion to be heard this date before the commencement of trial. Prior to trial, Officer Jacobs withdrew the motion.

TESTIMONY OF PARTIES AND WITNESSES

Plaintiff introduced the Residential Dwelling Lease agreement between Delaware State Housing Authority and Stephanie Morris for 60 Clarks Corner,¹ Harrington, Delaware, dated March 24, 2008 (Exhibit 1). Plaintiff also introduced the seven day termination letter dated May 19, 2010 with the Certificate of Mailing (Exhibit 2). Both exhibits were entered without objection.

Officer Jacobs of the Harrington Police Department testified that she originally went to defendant's residence on May 14, 2010 to locate two local fugitives based on a tip from an anonymous source. No one answered the door and she left a message for the defendant to call the police department. Defendant later called the police department and when Officer Jacobs returned to the unit, she was invited inside. After she entered the unit she closed both doors (screen door and storm door) behind her. As she was shining her flashlight around inside the unit, she saw a marijuana blunt on the floor approximately three to four feet inside the door. Officer Jacobs testified that she asked the defendant, "what's that?" to which the defendant acted embarrassed. Officer Jacobs testified that she did not "touch it, feel it or smell it." However, based on her training and experience the blunt was used for smoking marijuana. Officer Jacobs testified she permitted the

¹ Clarks Corner is a Public Housing Community.

defendant to dispose of the blunt and defendant picked the blunt up and flushed it down the toilet. There were three children in the room dressed in their pajamas watching television. Officer Jacobs stated to defendant, "I hope you're not smoking that in front of the children," to which the defendant replied, "no." Officer Jacobs further stated that she did not take the item or make an arrest due to the three small children in the residence and the fact she believed it was such a small amount of marijuana.

Stacey Lurry, Housing Manager for ten years, testified that Officer Jacobs advised her she found a half-smoked marijuana blunt in 60 Clarks Corner. When Ms. Lurry questioned the defendant about the matter, the defendant nodded her head and said it was lodged in the crease of the door. Defendant admitted to her it was marijuana, but stated it wasn't in the house, but lying in the crease of the door.

Defendant testified that the blunt was not inside the unit, but was lodged in the door and that someone else had been smoking marijuana and that there was a white paper in front of the door.

DISCUSSION

Procedures for Termination of Lease are stated on page 12, paragraph 14a of the lease agreement, which states in part:

"Management shall not terminate or refuse to renew this Lease other than for good cause or for other serious or repeated violation of material terms of the Lease, including but not limited to ...(5) either of the following types of criminal activity by Tenant, any member of the household, a guest, or another person under Tenant's control, shall be cause for termination of tenancy ... or any drug related criminal activity on or off such premises...."

Additionally, the lease agreement states in part on page 9, paragraph 8m:

"To assure that Tenant, any member of the household, a guest, or another person under Tenant's control, shall not engage in ...(4) any

drug related criminal activity on or off such premises. Any criminal activity in violation of the preceding sentence shall be cause for termination of tenancy, and for eviction from the leased premises. The term "drug related criminal activity" shall mean the illegal manufacture, sale, distribution, use, or possession with the intent to manufacture, sell, distribute, or use of a controlled substance (as defined in Section 102 of the Controlled Substance Act, 21 USC 802)."

Plaintiff's termination letter to defendant notified defendant that the lease was being terminated because, "...on or about May 14, 2010, you and/or your guests possessed marijuana in your unit. You were confronted by a Harrington police officer for this activity."

Legal Memorandum 97-222 (Revised) from Chief Magistrate Griffin dated April 3, 2002 discusses the United States Supreme Court decision, *Department of Housing and Urban Development v. Rucker*, 2002 WL 451887 (March 26, 2002) concerning drug-related activity in summary possession actions. Page 3 of the legal memo states in part:

"Federal regulations state that in an eviction by judicial action, neither arrest nor conviction are required to prove criminal activity. 24 CFR § 966.4(1)(5)(iii) (footnote omitted). Nor must the standard of proof for a criminal conviction be used. *Id.* (Use of a civil standard of proof is consistent with normal procedures in a summary possession action since such an action is civil in nature.)

The caselaw from other jurisdictions indicates that the appropriate civil standard is the "preponderance of the evidence" rather than the higher civil standard of "clear and convincing evidence" in cases involving eviction of public housing tenants...."

The legal memo further states on page 3:

"...when a public housing authority does seek to evict a tenant pursuant to its lease provisions regarding criminal activity, the Court must apply a "strict liability" standard – holding the tenant responsible

whether or not the tenant knew of, or should have known of, the activity.”

Based on the credibility of plaintiff’s witnesses and the Court’s above referenced conclusions of law, the Court finds plaintiff has proven their case by a preponderance of the evidence that defendant committed drug related activity. Officer Jacobs testified that based on her training and experience the item on the floor was a marijuana blunt. The housing manager testified that when she confronted the defendant about the police officer’s investigation resulting in the discovery of the blunt, the defendant admitted that it was marijuana. Finally, the defendant testified that the blunt was in the crease of the door, but not in the unit. She flushed the blunt down the toilet.² And, responded with an answer of “no” after Officer Jacobs asked, “I hope you’re not smoking that in front of the children.” Defendant’s drug-related activity violated paragraphs 8e, l, and m(1) and (4) of the lease agreement and requires eviction.

CONCLUSION

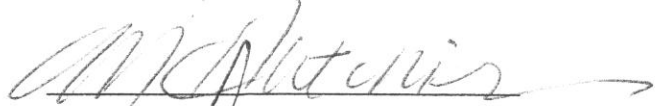
Based on the foregoing, the panel finds by unanimous verdict in favor of plaintiff Delaware State Housing Authority/Clarks Corner and against defendant Stephanie Morris. Therefore, the Court awards possession to the plaintiff as well as court costs.

Decision announced in open Court.

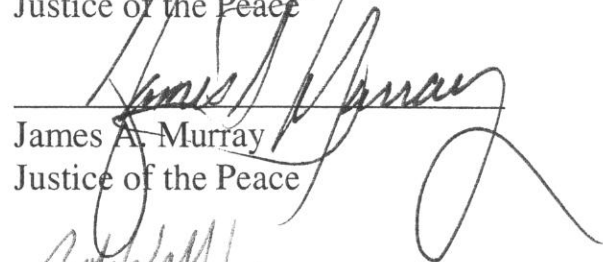
² A tacit admission that it was marijuana, since it was not placed in the trash can.

IT IS SO ORDERED this 5th day of August, 2010.

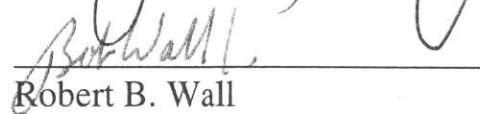
Trial De Novo Panel

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Cathleen M. Hutchison
Justice of the Peace

A handwritten signature in dark ink, appearing to read "James A. Murray", written over a horizontal line.

James A. Murray
Justice of the Peace

A handwritten signature in dark ink, appearing to read "Robert B. Wall", written over a horizontal line.

Robert B. Wall